

HOUSE No. 3365

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to safe transportation infrastructure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	8th Suffolk
Byron Rushing	9th Suffolk
Marc R. Pacheco	First Plymouth and Bristol
Bruce E. Tarr	First Essex and Middlesex
Karen E. Spilka	Second Middlesex and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SAFE TRANSPORTATION INFRASTRUCTURE.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make , therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (a) of Section 39M1/2 of Chapter 30 of the General Laws is hereby amended by
2 striking out after the words “major contract” the words “a contract by which the commonwealth or any of
3 its public agencies is to procure the construction of a highway, railway, bridge, tunnel or aviation facility
4 or any component thereof and for which the certified estimate of cost exceeds \$50,000,000” and inserting
5 in place thereof the following words:

6 a contract by which the commonwealth or any of its public agencies or authorities is to procure the
7 construction, repair or rehabilitation of a publicly owned highway, railway, bridge, tunnel, building
8 platform or aviation facility or any component thereof and for which the certified estimate of cost exceeds
9 \$50,000,000 or a contract or lease by which the commonwealth or any of its public agencies or authorities
10 is to procure directly or indirectly the construction, repair or rehabilitation of a privately owned and
11 publicly used highway, railway, bridge, tunnel, building platform or aviation facility or any component
12 thereof.

13 SECTION 2. Section 15 of Chapter 81A of the General Laws, as appearing in the 2006 General Edition,
14 is hereby amended by adding the following paragraph:

15 Notwithstanding any general or special law to the contrary, the owner, licensee, permittee or holder of an
16 easement, contract or other right, in this section called the air rights user, of or with respect to any
17 structure, including bridges, located above the established grade line of the turnpike, the Ted Williams
18 tunnel, the central artery north area and the central artery, as those terms are defined in this chapter, are
19 hereby required to maintain, repair, restore, reconstruct, rehabilitate, or improve air rights structures and
20 air space at such air rights user’s expense in accordance with the requirements of the authority’s policy

21 directive entitled "Tunnel Inspection and Testing Protocol for Roadways Covered by Air Rights
22 Developments," effective as of December 14, 2007, as the same may be modified and/or amended by the
23 authority from time to time, and with any directives issued by the authority in connection with such
24 policy. Without limiting the generality of its other powers, the authority may do all things necessary,
25 convenient or desirable to enforce this paragraph, to maintain, repair, restore, reconstruct, rehabilitate or
26 improve air rights structures and air space at the air rights user's expense, to enter upon the property of an
27 air rights user to exercise any of the foregoing powers and such entry shall not be deemed trespass nor
28 shall an entry for such purposes be deemed an entry for condemnation proceedings which may be then
29 pending, to impose a civil penalty in an amount of up to \$5,000 per day on an air rights users for failure to
30 comply with this paragraph, which penalty may be recovered only after notice and hearing conducted by
31 the authority or its designee and subject to judicial review and enforcement pursuant to chapter 30A of the
32 General Laws or such other civil proceedings as may be authorized by state or federal law. The full
33 amount of any civil penalty shall be paid to the authority. Nothing in this paragraph shall abrogate any
34 private right created by contract or otherwise.